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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 1089

WILLIE R. WILLIAMS,

Appellant,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Appellee.

On Appeal From the Supreme Court Of Illinois

BRIEF OF THE NATIONAL LEGAL AID
AND DEFENDER ASSOCIATION
AS AMICUS CURIAE

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March 5, 1970

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**BRIEF OF THE NATIONAL LEGAL AID
AND DEFENDER ASSOCIATION
AS AMICUS CURIAE**

The National Legal Aid and Defender Association files this Brief Amicus Curiae pursuant to the written consent of the parties submitted herewith.

INTEREST OF AMICUS CURIAE.

The National Legal Aid and Defender Association, hereinafter called NLADA, is a non-profit corporation whose primary purpose is to assist in providing more and better legal services for the poor. Its members include a great majority of defender offices, coordinated assigned counsel systems, and legal aid societies in the

United States. NLADA also has 1600 professional members, many of whom are practicing attorneys who represent indigent persons in criminal and civil matters.

The guiding philosophy of the NLADA and its members is that each citizen, regardless of his social and economic status, is entitled to equal justice under law. We, therefore, concur with the President's Commission on Law Enforcement and Administration of Justice which observed that: "Two unfortunate characteristics of sentencing practices in many lower courts are the routine imposition of fines on the great majority of misdemeanants and petty offenders and the routine imprisonment of defendants who default in paying fines. These practices result in unequal punishment of offenders and in the needless imprisonment of many persons because of their financial condition." *Task Force Report: The Courts* 18 (1967). The Report urged that society devise suitable alternative punishments so that those unable to pay will not be punished more severely than those of greater means. In the case presently before this Court the Illinois Supreme Court affirmed a lower court judgment imposing a \$500 fine and \$5 costs on the appellant and directed that in default of payment he be committed to jail to satisfy the unpaid fine and costs at the rate of \$5 per day. The court held that there is no denial of equal protection of the law "when an indigent defendant is imprisoned to satisfy payment of the fine." It is our contention that such a practice does indeed violate the constitutional rights of those too poor to pay.

The imprisonment of an indigent for failure to pay a fine is an issue of vital concern to members of NLADA, many of whom represent indigents who face possible

imprisonment for failure to pay a fine. The NLADA urges a reversal of the judgment of the Illinois Supreme Court because we believe that it is inherently unjust to permit indiscriminate imprisonment of indigent defendants simply because of their inability to pay fines and because we believe that the Constitution specifically prohibits the incarceration of indigent defendants for periods in excess of that authorized by statute solely because of their financial inability to pay fines and costs, also imposed as a penalty.

In view of the direct importance of this case to legal aid attorneys serving the poor throughout the country, and to the poor themselves, the Executive Committee of the NLADA, has authorized and instructed the NLADA staff to prepare and file an Amicus Brief in this case.

OPINION BELOW.

The opinion of the Supreme Court of Illinois is reported in 41 Ill. 2d 511, 244 N.E. 2d 197 (1969). There was no opinion in the court of the first instance, the Fourth Municipal District of the Circuit Court of Cook County, Illinois.

JURISDICTION.

The jurisdiction of this Court to review by appeal the judgment of the Supreme Court of Illinois is conferred by 28 U.S.C. 1257 (2). Probable jurisdiction was noted on January 19, 1970.

STATUTORY PROVISIONS INVOLVED.

The relevant Illinois statutory provisions are: (1) ch. 38, par. 1-7, (k), Ill. Rev. Stat. (1967) and (2) ch. 38, par. 180-6, Ill. Rev. Stat. (1967). These statutes are set out in full in Appendix B, pp. 6a-8a of appellant's jurisdictional statement.

QUESTION PRESENTED.

Whether incarcerating a defendant for a period in excess of that authorized by statute solely because of his inability to pay a fine and costs, also imposed as a penalty, is a denial of equal protection of law.

STATEMENT OF THE CASE.

The NLADA adopts Appellant's Statement.

SUMMARY OF ARGUMENT.

The Supreme Court has stated on a number of occasions that a denial of equal protection results when a state apportions justice according to the dollar. A clear implication of *Griffin v. Illinois*, 351 U.S. 12 (1956) and

its "progeny", such as *Burns v. Ohio*, 360 U.S. 252 (1959) and *Gideon v. Wainwright*, 372 U.S. 335 (1963), is that any system of incarceration for failure to pay a fine which is unmitigated by any effort to accommodate itself to the poverty of individual defendants makes the real sentence a man gets depend upon the amount of money he has.

Imprisonment for failure to pay a fine can validly be used only as a means to coerce payment of a fine and should not be used when the defendant is unable to pay.

The Illinois statute involved here allows a man of means to avoid incarceration while denying the same opportunity to an indigent.

The laws of each of the fifty states provide for incarceration of defendants who are unable to pay fines adjudged against them. Only three states forbid imprisonment for failure to pay a fine where such imprisonment results in a defendant's confinement for a period longer than the maximum term allowed by law upon conviction of the offense. In states without such a statutory provision, imprisonment beyond the maximum term allowed by law is possible.

The number of persons incarcerated for failure to pay fines is substantial.

The practice of incarcerating those unable to pay fines affects thousands of poor persons in the United States each year insofar as it may result in the imprisonment of indigents for a longer term than that allowed by statute and should not be allowed to persist.

ARGUMENT.

I.

IMPRISONING A DEFENDANT FOR A PERIOD IN EXCESS OF THAT AUTHORIZED BY STATUTE SOLELY BECAUSE OF HIS FINANCIAL INABILITY TO PAY A FINE AND COSTS, ALSO IMPOSED AS A PENALTY, IS A DENIAL OF EQUAL PROTECTION OF LAW.

Historically, a fine was conceived as an alternative to a jail or prison sentence. Today, it is not uncommon that the result of a fine is the "very jail sentence which is sought to be avoided." See A.B.A. MINIMUM STANDARDS FOR CRIMINAL JUSTICE, *Sentencing Alternatives and Procedures* 119 (Approved Draft, 1968). The broad question, and one indirectly at issue in the instant case, is whether any statutory scheme resulting in an indigent's incarceration resulting fully from his inability to pay a fine is unconstitutional. Not at issue is the question of whether fines, as such, are a valid criminal sanction. Specifically, the narrow question for determination before this Court is whether an indigent appellant can be made to serve out a fine at \$5 per day *in addition* to the maximum term of imprisonment allowable for the offense. Ill. Rev. Stat. Ch. 38, par. 1-7 (k) (1967).

Pursuant to the statutory authority cited above the appellant was sentenced to 101 additional days in jail beyond his maximum term of imprisonment, because of his inability to pay a fine and court costs totaling \$505. Illinois is imposing additional imprisonment for no reason other than indigency. The statute, and its application in the case at bar, raise a serious question of a

fundamental deprivation of rights under the Equal Protection Clause of the Fourteenth Amendment.

This Court has restated on several occasions propositions fundamental to our form of government—that all men stand equally before the law, that the same justice must be meted out to the rich and to the poor alike, and that to deny these tenets amounts to a denial of equal protection. This Court stated in *Griffin v. Illinois*, 351 U.S. 12, 17 (1956) that “in criminal trials a state can no more discriminate on account of poverty than on account of religion, race, or color.” Similarly, this Court has stated that “lines drawn on the basis of wealth or poverty, like those of race, are traditionally disfavored . . .” *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 668 (1966).

The case presently before this Court presents a stock example of a denial of equal protection of laws wherein a state apportions justice according to the dollar. This situation was condemned by this Court in *Griffin, supra* at 19, wherein it stated “there can be no equal justice where the kind of trial a man gets depends upon the amount of money he has.” Just as poverty should not be the sole reason for denying a man access to trial and appellate courts, so poverty should not be the sole reason for a person’s incarceration. Yet, this is precisely the case if a rich man can pay his fine and *not* be imprisoned and a poor man who cannot pay his fine is imprisoned. The poor man is suffering punishment for his poverty rather than punishment for the substantive offense for which he was convicted.

A clear implication of *Griffin* and its “progeny”—such as *Burns v. Ohio*, 360 U.S. 252 (1959), *Smith v.*

Bennett, 365 U.S. 708 (1961), *Gideon v. Wainwright*, 372 U.S. 335 (1963), and *Douglas v. California*, 372 U.S. 353 (1963),—is that any system of incarceration for failure to pay a fine which is unmitigated by any effort to accommodate itself to the poverty of individual defendants, makes the real sentence a man gets depend upon the amount of money he has.

It is both appropriate and necessary that this Court develop a rationale for distinguishing between confinement of indigents for involuntary non-payment of a fine and voluntary non-payment of a fine. Imprisonment for non-payment of a fine should be relied upon only as a method of correction for individuals who are able to pay their fine and who have wilfully refused to do so. A person must be capable of paying a fine before he can be imprisoned for his "refusal" to pay it. This Court should no longer sustain holdings the effect of which permit imprisonment of defendants who are *unable* to pay. See e.g., *People v. Saffore*, 18 N.Y. 2d 101 (1966), 218 N.E. 2d 686, 687.

Any system which enforces the payments of fines by imprisonment clearly effects different treatment of those incarcerated depending on whether they are with or without funds to pay fines. Our courts should no longer tolerate the situation wherein two persons convicted of identical offenses, under essentially similar circumstances and upon comparable records, and sentenced to pay the same fines can walk out of court or be transported to jail depending entirely upon how much money they have. See Appellant's Jurisdictional Statement, at p. 11. Such a practice is violative of the thrust of *Griffin, supra* and *Douglas v. California, supra*. The equal protection guarantee calls for procedures by the state that do not permit

discrimination between persons, on the basis of their ability to pay the costs of litigation. *Griffin* and *Douglas* make no distinction between intentional and unintentional forms of state discrimination. Rather, these two cases stand for the proposition that if a state perpetuates unintentional and accidental inequality affecting rights of the poor, such action will be treated no differently, for purposes of the Equal Protection Clause, than any other kind of premeditated and invidious discrimination.

States must provide the poor with the same out-of-prison opportunities to meet the costs of a fine which a monied defendant enjoys automatically. In a recent study of the Equal Protection Clause, former Justice Goldberg stated:

"... 'the choice' of paying \$100 fine or spending thirty days in jail is really no choice at all to the person who cannot raise \$100. The resulting imprisonment is no more or no less than imprisonment for being poor, a doctrine which I trust this nation has since long outgrown." See Goldberg, *Equality in Government*, 39 N.Y.U. L. Rev. 205, 221 (April, 1964).

In the same article Mr. Goldberg cites *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), at 373, for the proposition that "though the law itself be fair on its face, impartial in its appearance, yet if it is applied and administered by public authority with an evil eye and unequal hand so as practically to make unjust and illegal discriminations between persons in similar circumstances material to their rights the denial to equal protection is still within the prohibition of the Constitution."

In *People v. Collins*, 47 Misc.2d 210, 261 N.Y.S. 2d 970 (Orange County Ct. 1965), an indigent defendant sen-

tenced to both jail and fine argued that since he could not pay the fine portion of his sentence that it was unconstitutional to impose any further jail sentence on him because of his inability to pay the fine. The court held that since such a sentence discriminated between an indigent and a non-indigent, it violated the Equal Protection Clause. The court based its holding on two grounds: First, since the statutory purpose was to enforce payment of the fine, such a purpose was not being furthered in the case of an indigent who could not pay the fine; and second, wealthy defendants have an undue advantage in that they could avoid additional jail sentences by payment of the fine, while the indigent was incarcerated regardless of his desire to pay. The court felt that the consequences of the statute was to make an "invidious discrimination" between rich and poor even though the law was administered fairly and equally on its face.

In a case that is almost indistinguishable from the case now before this Court, *People v. Saffore, supra*, the indigent appellant pleaded guilty to a misdemeanor. The trial court, with full knowledge of appellant's financial condition, sentenced him to one year's imprisonment (the maximum limit of incarceration for the offense) and fined him \$500 with provision that the fine, if not paid, be served out at the rate of one day's imprisonment for each dollar unpaid. The New York Court of Appeals reversed the trial court's decision holding that when the trial court is cognizant of an individual's inability to pay a fine, subsequent imprisonment in lieu of the fine resulting in imprisonment for more than the permissible maximum sentence violates the defendant's right to equal protection and due process of the law. The Court of Appeals, in *Saffore* felt that the trial court had not employed a

lawful means for enforcing payment of the fine but rather had employed an illegal method of requiring imprisonment beyond the authorized maximum term of imprisonment. The court noted that since imprisonment for failure to pay a fine can validly be used only as a means to coerce payment of a fine that it is illegal to so imprison a defendant financially unable to pay. See also *Sawyer v. The District of Columbia*, 238 A. 2d 314 (D.C. Ct. App. 1968) where on facts similar to *Saffore*, the court struck down as an abuse of discretion a prison-in-lieu of fine provision of a sentence imposed upon an indigent.

The appellant in the case before this Court was sentenced to 101 additional days of incarceration not because it was thought that the protection of the community or his reformation required this additional term, but simply because he was poor and unable to pay the fine imposed. The Constitution must not countenance such an invidious discrimination against the poor particularly when alternative means exist for the state to achieve its end. Courts may provide for installment payments of a fine upon establishing indigency. Recently, a United States District Court reversed a state court on equal protection grounds on its refusal to permit installment payments of a fine. The District Court ordered that the defendant be permitted "... to pay his fine in installments, rather than to give him no alternative but to serve a sentence to jail. In this respect, therefore, we must find that, under these peculiar circumstances [failure to provide the alternative of installment payments] there was a denial of equal protection of laws under the Fourteenth Amendment." See *Martin v. Erwin*, Civil No. 13084 (W.D. La., Jan. 25, 1968; Supplemental Order, Feb. 27, 1968).

We are not requesting this Court to undertake the impractical and impossible task of eradicating every disadvantage of indigency from the administration of criminal justice. Rather we ask only that imprisonment for failure to pay a fine be limited so as not to include those persons who fail to pay because they are financially unable to pay. We urge this Court to apply the principles it has expounded in *Griffin* and subsequent decisions to the precise fact situation at issue—a poor defendant sentenced to surrender 101 additional days of his freedom because of his inability to pay a fine and court costs. The appellant in this case had no choice because he was poor. He had to serve his time. On the other hand, a man of means had the choice of paying or serving.

We believe that the constitutional guarantee of equal protection of the law is not subject to a construction that allows a man of means to avoid incarceration while denying the same opportunity to an indigent. We agree with Mr. Justice Douglas that "... the promise of equal justice for all would be an empty phrase for the poor if the ability to obtain judicial relief were determined by the length of a person's purse." *Williams v. Shaffer*, 385 U.S. 1037 (1967) (Douglas, J., dissenting from denial of certiorari). Equal protection of the law should not embrace judicial procedures that permit imprisonment of indigent persons for involuntary non-payment of fines, while financially able defendants can readily buy their freedom. Just as our state courts must be open to all—rich and poor alike—so must our state courts mete out rational and purposeful punishment which reflects a policy of equality of treatment as distinguished from an alleged right.

II.

IMPRISONING A DEFENDANT FOR A PERIOD IN EXCESS OF THAT AUTHORIZED BY STATUTE SOLELY BECAUSE OF HIS FINANCIAL INABILITY TO PAY A FINE AND COSTS, ALSO IMPOSED AS A PENALTY, IS A PRACTICE WHICH IS NATIONAL IN SCOPE.

A. The laws of each of the fifty states provide for incarceration of defendants who are unable to pay fines adjudged against them.

Each of the fifty states has one or more provisions in its statutes allowing the incarceration of defendants who do not pay fines which have been adjudged against them. A survey of these statutory provisions is contained in Appendix A.

Only a handful of statutes provide that the total amount of imprisonment, composed of both a sentence to prison or jail and the term of imprisonment imposed for failure to pay the fine assessed, may not exceed the statutory maximum term of imprisonment allowed for the offense of which the defendant is convicted. California and Arizona both have incarceration statutes with this important limitation. Cal. Pen. Code Sec. 1205 (West Supp. 1968); Ariz. Rev. Stat. Ann. Sec. 13-1648 (1956). The Louisiana statute is similar for offenses for which the maximum imprisonment is six months or less. La. Crim. Pro. Code Ann. Art. 884 (Supp. 1970).

Other states attempt to mitigate the harshness of imprisonment for failure to pay fines by providing by statute a maximum term of imprisonment for this purpose, e.g., Del. Code Ann. Tit. 11, Sec. 4103 (Supp. 1968). (Maximum of one year; 90 days for justices of the peace); Fla. Stat. Ann. Sec. 775.07 (1965) (where penalty

provided is a fine only, maximum term for default is 60 days); Ill. Rev. Stat. (1969) ch. 38, Sec. 1-7(a) (maximum of six months); La. Crim. Pro. Code Ann. Art. 884 (Supp. 1970) (maximum of one year); for others see Appendix A: Maine, Mississippi, New Mexico, New York, Ohio, West Virginia and Wisconsin.

. Statutes in other states provide that poor persons who do not have money or other possessions with which to pay the fine adjudged against them may be released after a specified minimum amount of time, rather than "working off" the fine at the rate of credit per day provided by statute. See, e.g. Hawaii Rev. Stat., Sec. 712-4 (1968) (30 days); Mass. Ann. Laws ch. 127, Sec. 146 (3 months); N. M. Stat. Ann. Sec. 42-2-9 (B) (1964) (3 months); for others see Appendix A: Oklahoma, Oregon, Pennsylvania. Usually, however, release under these statutes requires the taking of an oath by the prisoner that he possesses no more than an extremely minimal amount of property, see, e.g., Hawaii Rev. Stat. Sec. 712-4 (1968); or the indigent defendant may be required to undergo a certification of poverty by certain officials, see e.g., Okla. Stat. Ann. Tit. 57, Sec. 15 (1969).

The implication of these and similar statutes is that a poor person unable to pay a fine adjudged against him should not have the law requiring incarceration applied to him in all its harshness simply because he is indigent. The legislatures in the states where such laws have been enacted have declared it to be their will that those too poor to pay should be treated differently from those who refuse to pay. However, given the fact that these legislatures have progressed this far, it is somewhat difficult to understand why an indigent should be released only

after serving a minimum term (e.g., three months) for non-payment of a fine.

Apparently, the fear which prevails is that indigents, if not incarcerated for failure to pay a fine, will go unpunished for their crimes. This fear might be put to rest by instituting a scheme allowing installment payments of fines by those too poor to pay the whole amount at once. At present, this is the practice in several states, e.g., Cal. Pen. Code. Sec. 1205 (1956); Mass. Ann. Laws ch. 279, Sec. 1A (1968); Mich. Comp. Laws Ann. Sec. 769.3 (1968); Pa. Stat. Ann. Tit. 19, Sec. 953 (1964); S. C. Code Ann. Sec. 17-557 (1962); Wash. Rev. Code Sec. 9.92.070 (1961).

The A.B.A. MINIMUM STANDARDS FOR CRIMINAL JUSTICE *Sentencing Alternatives and Procedures* (Approved Draft, 1968) recommends that installment payments be permitted (Sec. 2.7(b), at p. 117). It is further recommended that fines not be imposed at all in cases where the court knows that the defendant will not be able to pay them. A directly imposed jail sentence or some form of limited confinement are suggested as more appropriate solutions to the problem. (*Id.*, p. 123).

The NLADA believes that pursuant to the statutes which are on the books of all but a few states, there exists nationwide the possibility, indeed the probability, that those who are indigent and therefore cannot afford to pay the fines levied against them often will be subject to terms of imprisonment longer than the statutory maximum provided for the crimes of which these persons are convicted.

B. The number of indigent defendants incarcerated for failure to pay fines is substantial.

As of 1965, it was estimated that five million persons a year were charged with misdemeanors in the state courts. I. Silverstein, *Defense of the Poor*, 123, (1965). Although more recent statistics are not readily available, all indications are that this number has increased. For example, a comparison of judicial statistics for the municipal courts of New Jersey for the court years 1964-1965 and 1966-67 shows an increase in non-traffic offenses (which mainly consist of disorderly persons offenses and local ordinance violations from 104,196 to 114,551, an increase of nearly 10%. New Jersey Administrative Office of the Courts, *Annual Report of the Administrative Director of the Courts, 1966-1967*, (1968).

Of the large numbers of persons convicted of misdemeanors, many are sentenced to either a fine or both a fine and a jail term. Under the laws of each of the fifty states, summaries of which are contained in Appendix A, persons who are unable to pay their fines are subject to incarceration for failure to do so. That persons unable to pay fines are actually incarcerated for non-payment is indicated by a number of authorities. Some of the best known figures are those contained in Rubin, *Criminal Correction*, (1963), at page 253. A study of the Philadelphia County jail showed that 60 percent of the inmates had been committed for non-payment and in 1960 there were over 26,000 prisoners in New York City jails for default in payment of fines.

Statistics on numbers of persons incarcerated for non-payment of fines are not readily available for most states, but where they are available they indicate that the num-

bers are significant. For example, for the court year September 1, 1966 to August 31, 1967, 160,793 non-traffic, non-parking complaints were filed in the Municipal Courts of New Jersey. Of this number there were 76,036 convictions in court and pleas of guilty (not including violations bureau cases in which defendants sign a guilty plea and trial waiver). Of these 76,036 convictions and guilty pleas, 6,138 defendants were committed to jail because of non-payment of fines. New Jersey Administrative Office of the Courts, *Proceedings in the Municipal Courts, Traffic (Non-Parking), Parking and Criminal Cases*) Sept. 1, 1966 to Aug. 31, 1967.

In an attempt to obtain more recent statistics for different areas in the United States, the NLADA prepared a questionnaire to be answered by its approximately 800 Legal Aid and Defender members. This questionnaire is set out in Appendix B. The response to our questionnaire was necessarily limited because of the fact that the great majority of legal aid offices do not represent defendants in criminal cases, and that a number of defender offices, which ordinarily defend in criminal cases, do not take misdemeanor cases. The problem was further complicated by the unavailability of statistics in many offices. Nevertheless, the survey unearthed some revealing statistics concerning the numbers of persons incarcerated for failure to pay fines. These statistics are contained in Appendix C.

CONCLUSION.

For the reasons stated we respectfully submit that the judgment of the Supreme Court of Illinois in this case should be reversed.

Respectfully submitted,

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March 5, 1970

APPENDIX A

STATE STATUTORY PROVISIONS CONCERNING INCARCERATION FOR FAILURE TO PAY FINE

Alabama

If the fine is not paid defendant is imprisoned in the county jail, possibly at hard labor. The statute is so worded that defendants who have been fined differing amounts may be imprisoned for the same amount of time in satisfaction of the fine. There is no provision in the statute for payment by installment. Ala. Code Tit. 15, Sec. 341 (1958).

Alaska

The judgment that defendant pay a fine shall also direct imprisonment until the fine is satisfied. Rate of credit: \$5 per day (additional \$5 if prisoner works.) Alas. Stat. Sec. 12.55.010 (1962).

When an indigent defendant has been confined in prison 30 days solely for the nonpayment of the fine, the defendant may petition the magistrate for discharge if certain conditions are met. *Id.* 12.55.030.

Arizona

The sentence of fine may also direct that defendant be imprisoned until the fine is satisfied, but the imprisonment shall not extend beyond the term for which defendant might be sentenced to imprisonment for the offense of which he has been convicted. Rate of credit: \$1 per day. Ariz. Rev. Ann. Sec. 13-1648 (1956).

Arkansas

If the punishment of an offense is a fine, the judgment shall direct that defendant be imprisoned until fine and

(Appendix)

costs are paid. Rate of credit: \$1 per day. Ark. Stat. Ann. Sec. 43-2315 (1964).

Specifically applying to convictions of misdemeanor and also providing for imprisonment at the rate of \$1 per day. *Id.* Sec. 46-510.

Providing that confinement shall not discharge the fine which can only be collected by proceeding against the defendant's property. *Id.* Sec. 43-2606.

California

Judgment that defendant pay a fine may also direct that he be imprisoned until the fine is satisfied. Rate of credit: not less than \$2 per day. When defendant is convicted of a misdemeanor, the judgment may provide for payment of the fine in installments with imprisonment in the event of default. Cal. Pen. Code Sec. 1205 (1968).

But imprisonment for nonpayment of a fine may not exceed in any case the term for which the defendant might be sentenced for the offense of which he has been convicted. *Id.*

Colorado

Court shall have power as part of its judgment to order that the offender be committed to jail until the fine is paid or otherwise legally discharged. Colo. Rev. Stat. Ann. Sec. 39-10-10 (1964).

Persons confined in jail for fines who have no estate with which to pay such fines may be discharged from imprisonment. *Id.* Sec. 39-10-9.

Connecticut

If a convict fails to pay a fine lawfully imposed, he shall be committed to jail until the fine is paid. Conn. Gen. Stat. Ann. Sec. 18-63 (1968).

Rate of credit: \$3 per day. *Id.* Sec. 18-50.

When a person is convicted of a crime punishable by a fine or imprisonment, the court may impose upon the

(Appendix)

offender a conditional sentence and order him to pay a fine within a limited time and in default of so doing, to be imprisoned. *Id.* Sec. 54-119.

Delaware

When a person is sentenced to pay a fine, the courts named in this section may order imprisonment up to one year, if no term for such nonpayment is otherwise fixed by law. Del. Code Ann. Tit. 11, Sec. 4103(a), (Supp. 1968).

In the same situation, justices of the peace and other named courts may order the person defaulting imprisoned for no longer than 90 days. *Id.* Tit. 11, Sec. 4103(b).

Florida

When a court sentences a person to pay a fine, the court shall also provide in the sentence a period of time of imprisonment in case of default. Fla. Stat. Ann. Sec. 921.14 (Supp. 1969).

In cases of convictions for misdemeanor, the court may order the defendant to serve not exceeding sixty days in default of payment of a fine. *Id.* Sec. 775.07.

Rate of credit: *Id.* Sec. 951.16.


Georgia

Fines imposed by the court shall be paid immediately or within such reasonable time as the court may grant. Ga. Code Ann. Sec. 27-2901 (1969 Supp.).

Judge may provide as a means of enforcing payment of a fine that the defendant be imprisoned until the fine is paid. *R. E. Lee v. State*, 118 S.E. 2d 599 (1961).

Hawaii

When a judgment to pay a fine is not satisfied by immediate payment, the offender shall be committed to prison until the judgment is satisfied. Hawaii Rev. Stat. Sec. 712-4 (1968).



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A poor person, after having been confined for thirty days, solely for the nonpayment of a fine, may make application to the circuit court for the circuit in which he is imprisoned for release. The person may then be discharged upon the taking of an oath. *Id.*

Idaho

A judgment that defendant pay a fine may also direct that the defendant be imprisoned until the fine has been satisfied. Rate of credit: \$5 per day. Idaho Code Ann. Sec. 19-2517 (1969 Supp.).

Substantially the same is provided, for both felonies and misdemeanors, by *Id.* Sec. 18-303.

Illinois

In a judgment imposing a fine, the court may order that upon nonpayment of the fine the offender may be imprisoned. Rate of credit: \$5 per day. But no person may be imprisoned in this fashion for longer than six months. Ill. Rev. Stat. (1969) ch. 38, Sec. 1-7(k).

If a person confined in jail for failure to pay a fine has no estate with which to pay the fine, the court may release that person. *Id.* ch. 38, Sec. 180-6.

Indiana

Whenever a person is fined for a felony or a misdemeanor, the judgment shall be that he is committed until the fine is paid. Ind. Ann. Stat. Sec. 9-2228 (1956).

Rate of credit: \$5 per day. *Id.* Sec. 9-2227a (Supp. 1969).

Iowa

The judgment that defendant pay a fine may also direct that he be imprisoned until the fine is satisfied. Iowa Code Ann. Sec. 762.32 (1950).

Rate of credit: \$3 $\frac{1}{3}$ per day. *Id.* Sec. 789.17.

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Kansas

Defendant to be ordered committed to county jail until fine is paid. Kan. Gen. Stat. Ann. Sec. 62-1513 (1964).

Rate of credit: \$2 per day. *Id.* Sec. 62-2109.

A person imprisoned for failure to pay a fine may be discharged from imprisonment if found to be unable to pay. *Id.* Sec. 62-1515.

Kentucky

Judgment shall be rendered directing that the defendant shall work at hard labor until the fine and costs are satisfied. Ky. Rev. Stat. Sec. 431.140 (1969).

Rate of credit: \$2 per day. *Id.*

Louisiana

If a fine is imposed, the sentence shall provide that in default the defendant shall be imprisoned for a specified period not to exceed one year. But: where the maximum prison sentence which may be imposed as a penalty for a misdemeanor is six months or less, the total period of imprisonment upon conviction of the offense, including imprisonment for default, shall not exceed six months for that offense. La. Crim. Pro. Code Ann. Art. 884 (1970 Pocket part).

Maine

Convict sentenced to pay fine may be committed or confined for default thereof, but not longer than 11 months for any single fine. Me. Rev. State Ann. Tit. 15, Sec. 1904 (Supp. 1970).

Rate of credit: \$5 per day. *Id.*

Maryland

In default of payment of a fine, a person adjudged guilty shall be committed to jail until discharged by due course of law. Md. Ann. Code Art. 38, Sec. 1 (1965).

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Installment payments in some counties are provided for. *Id.* Art. 52, Sec. 18 (1969 Supp.).

Rate of credit: \$2 per day (with some modifications resulting in shorter periods of confinement in some cases than would result at \$2 per day). *Id.* Art. 38, Sec. 4 (1969 Supp.).

Massachusetts

When a person convicted is sentenced to pay a fine, he may also be sentenced to be committed until it is paid. Mass. Ann. Laws, ch. 279, Sec. 1; ch. 127, Sec. 144 (1969).

Rate of credit: \$1 per day. *Id.* ch. 127, Sec. 144.

The execution of the sentence of confinement may be suspended and the defendant placed on probation on condition that he pay the fine within a certain time, either in one payment or in installments. In case of default, the court may revoke the suspension of the execution of the sentence. *Id.* ch. 279, Sec. 1.

Discharge of poor prisoners incarcerated for failure to pay fines. *Id.* ch. 127, Sec. 145, (when fine is less than ten dollars); Sec. 146, (when the prisoner has been confined for three months).

Michigan

The court may impose upon the offender a conditional sentence and order him to pay a fine within a limited time and in default of so doing to be imprisoned. The court may also place the offender on probation with a condition that he pay a fine in installments and in default of such payments be imprisoned. Mich. Comp. Laws Ann. Sec. 769.3 (1968).

Execution may issue for the collection of fines in cases where no alternative sentence or judgment of imprisonment has been rendered, but no one may be imprisoned under such execution for longer than 90 days. *Id.* Sec. 600.4815.

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Minnesota

If a defendant's fine exceeds the amount of his bail, the defendant shall be committed until the balance is paid. Minn. Stat. Ann. Sec. 629.53 (1947).

Rate of credit: \$3 per day. *Id.* Sec. 641.10 (Supp. 1969).

Mississippi

Convicts to be imprisoned until fine is fully paid. However, no convict may be held for more than two years for failure to pay the fine for any one offense. Miss. Code Ann. Sec. 7899 (1957).

Rate of credit: \$3 per day. *Id.* Sec. 7906.

Missouri

When a defendant is sentenced to pay a fine, he shall be imprisoned until the sentence is fully complied with. Mo. Ann. Stat. Sec. 546.830 (1953).

The judge, on petition of the prisoner, may sentence him to imprisonment for a limited time in lieu of the fine. *Id.* Sec. 546.840.

Rate of credit: \$2 per day. *Id.* Sec. 551.010.

Magistrates' courts have similar powers but the rate of credit may vary from \$2 to \$10 for each day of confinement. *Id.* Secs. 543.260 and 543.270.

Montana

The judgment may be for fine and imprisonment until the fine is paid. Mont. Rev. Codes Ann. Sec. 95-3202(b) (1969).

Rate of credit: \$10 per day. *Id.*

Nebraska

In cases where courts or magistrates have power to sentence an offender to pay a fine, those courts or magistrates may make it a part of the sentence that the party

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be committed until the fine is paid. Neb. Rev. Stat. Sec. 29-2206 (1965).

Rate of credit: \$6 per day. *Id.* Sec. 29-2412.

In cases of misdemeanor, offenders may be committed to the county jail until the fine is paid. *Id.* Sec. 29-2404.

Nevada

A person sentenced to pay a fine may be confined until the fine is satisfied. Nev. Rev. Stat. Sec. 176.065 (1967).

Rate of credit: \$4 per day. *Id.*

New Hampshire

A person sentenced to pay a fine shall be ordered to be imprisoned until sentence is performed. N. H. Rev. Stat. Ann. Sec. 618.6 (1969 Supp.).

Rate of credit: \$5 per day. *Id.* Sec. 618.9.

New Jersey

Defendant may be placed at labor in a county jail or penitentiary until the fine is paid. N. J. Stat. Ann. Sec. 2A:166-14 (1953).

Defendant may also be permitted to remain at large for a fixed time to enable him to pay the fine. If defendant fails to pay, the court may then order him into custody. *Id.* Sec. 2A:166-15.

Rate of credit: \$5 per day. *Id.* Sec. 2A:166-16 (Supp. 1969).

A disorderly person who defaults in the payment of a fine may be committed by the court. *Id.* Sec. 2A:169-5 (Supp. 1969).

New Mexico

A person may be committed to prison for nonpayment of a fine. N. M. Stat. Ann. Sec. 42-2-9 (Supp. 1969). (Applies to both county jails and the state penitentiary—Compiler's Note).

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Rate of credit: \$5 per day. *Id.*

If a person so confined makes an affidavit that he has no property out of which to pay the fine, he must be released after three months of confinement. *Id.* sub. B.

But convicts sentenced to the state penitentiary may not be required to serve more than thirty days for a fine. *Id.* Sec. 42-1-60 (1964).

New York

In the event the defendant fails to pay a fine as directed, the court may direct that he be imprisoned until the fine is satisfied (limitations: for a felony, the imprisonment may not exceed one year; for a misdemeanor, it may not exceed one third of the maximum authorized sentence.) N. Y. Code Crim. Proc. Sec. 470-d (Supp. 1969).

Sec. 470-d has been limited by *People v. Saffore*, 18 N.Y. 2d 101, 218 N.E. 2d 686 (1966), discussed in the body of this brief.

North Carolina

If a guilty party is sentenced to pay a fine and it is not immediately paid, the guilty person may be committed to the county jail until the fine is paid. N. C. Gen. Stat. Sec. 6-65 (Supp. 1970).

Persons committed for fines may be discharged from imprisonment upon taking an insolvent debtor's oath. *Id.* Secs. 23-23 and 23-24 (1965).

North Dakota

A judgment that the defendant pay a fine also may direct that he be imprisoned until the fine is satisfied. N. D. Cent. Code Sec. 29-26-21 (1960).

Rate of credit: \$2 per day (but such imprisonment does not discharge the judgment for the fine.) *Id.*

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Ohio

When a fine is the whole or part of a sentence, the court or magistrate may order that the person sentenced remain in jail until the fine is paid but no commitment may exceed six months. Ohio Rev. Code Ann. Sec. 2947.14 (1964).

Rate of credit: \$3 per day. *Id.*

In a case of conviction for a misdemeanor, the judge or magistrate has the same power as above, but there is no limit of six months. *Id.* Sec. 2947.20.

Oklahoma

Persons sentenced to pay a fine who refuse or fail to pay it, may be imprisoned. Okla. Stat. Tit. 11, Sec. 794 (Supp. 1969).

Rate of credit: \$2 per day. *Id.*

A poor convict who has been imprisoned for nonpayment of a fine may be discharged after serving six months if two justices of the peace are satisfied that the convict has not had since his conviction any estate with which he might have paid the fine. *Id.* Tit. 57, Sec. 15 (1969).

Oregon

A judgment that the defendant pay a fine shall also direct that he be imprisoned in the county jail until the fine is satisfied. Ore. Rev. Stat. Sec. 137.150 (1963).

Rate of credit: \$5 per day. *Id.*

Indigents imprisoned for nonpayment of fine may be discharged after serving thirty days solely for such nonpayment if in the opinion of a magistrate or court it appears that the prisoner is unable to pay the fine. Ore. Rev. Stat. Sec. 169.160 (1967).

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Pennsylvania

Persons may be imprisoned in an action for fines of penalties. Pa. Stat. Ann. Tit. 12, Sec. 257 (1953). A person confined for nonpayment of a fine may be discharged if he conforms to the provisions for insolvent debtors, but no application is allowed until the prisoner has served at least three months. *Id.* Tit. 39, Sec. 323 (1954).

The sentencing authority may allow payment of a fine by installments, but upon default the defendant may be committed. *Id.* Tit. 19, Secs. 953 and 956 (1964).

Rhode Island

Persons may be committed to the adult correctional institutions for the nonpayment of fines. R. I. Gen. Laws Ann. Sec. 13-2-36 (1957).

Rate of credit: \$5 per day. *Id.*

The director of social welfare may recommend the release of persons so confined, but no guidelines are set out in the statute. *Id.*

South Carolina

Offenders may be committed to jail, if they are unable to pay forfeitures, until the amount is satisfied. S. C. Code Ann. Sec. 17-574 (1962).

Offenders so committed are entitled to the privilege of insolvent debtors. *Id.*

Installment payments as a condition of probation. *Id.* Sec. 55-593.

South Dakota

A judgment that the offender pay a fine may also direct that he be imprisoned until the fine is satisfied. S. D. Comp. Laws Ann. Sec. 23-48-23 (1969).

Rate of credit: \$2 per day. *Id.*

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Tennessee

If a fine is not paid, the defendant shall be imprisoned until it is paid. Tenn. Code Ann. Sec. 40-3203 (1955).

Rate of credit: \$5 per day. *Id.* Sec. 41-1223 (1956).

Texas

When a defendant convicted of a misdemeanor is unable to pay the fine adjudged against him, he may be put to work or imprisoned for a sufficient length of time to discharge the amount. Tex. Code Crim. Proc. Art. 43.09 (1966).

Utah

A judgment that a defendant pay a fine may also direct that he be imprisoned until the fine is satisfied. Utah Code Ann. Sec. 77-35-15 (1953).

Rate of credit: \$2 per day. *Id.*

Vermont

When a person is sentenced to imprisonment and also to pay a fine, the court may order him imprisoned for failure to pay the fine, the term of imprisonment to begin at the end of the term in the original sentence. Vt. Stat. Ann. Tit. 13, Sec. 7222 (Supp. 1969).

When a person is sentenced only to pay a fine, the court shall order that if the sentence is not complied with within twenty-four hours the person may be imprisoned. *Id.* Sec. 7223.

Rate of credit: \$1 per day. *Id.* Secs. 7222 and 7223.

Virginia

The circuit or corporation court in which any judgment for a fine is rendered may commit the defendant to jail until the fine is paid. Va. Code Ann. Sec. 19.1-339 (Supp. 1963).

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In any misdemeanor case tried before a court not of record in which a fine is imposed on a defendant, if no security is given, the defendant may be committed to jail until the fine is paid. *Id.* Sec. 19.1-338.

Washington

If a person does not pay the fine adjudged against him within five days, that person may be imprisoned in the county jail until the fine is paid. Wash. Rev. Code Ann. Sec. 10.82.030 (Supp. 1969).

Installment payments permitted. *Id.* (1961).

West Virginia

When a judgment for a fine is rendered by a court of record having jurisdiction in criminal cases, the court may also provide, as a part of the judgment, that the defendant be imprisoned until the fine is paid. W. Va. Code Ann. Sec. 62-4-9 (1966).

Rate of credit: \$1.50 per day. *Id.* Sec. 62-4-10.

Confinement for failure to pay a fine shall not exceed the term of six months. *Id.*

Wisconsin

When a fine is imposed, the court shall also sentence the defendant to be committed to the county jail until the fine and costs are paid or discharged. Wis. Stat. Ann. Sec. 959.055 (Supp. 1969).

The court may grant a reasonable time not exceeding one stay of 30 days based on the defendant's circumstances in which to make payment before committing him to the county jail. *Id.*

The time of imprisonment, in addition to any other imprisonment, shall not exceed six months. *Id.*

Installment payments permitted. *Id.* Sec. 57.04.

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Wyoming

Any court shall have power, in cases of conviction where a fine is inflicted, to order as part of its judgment that the offender shall be committed to jail until the fine is paid or otherwise legally discharged. Wyo. Stat. Ann. Sec. 7-280 (1959).

Rate of credit: \$1 per day. *Id.* Sec. 6-8.

APPENDIX B

MISDEMEANOR FINE VS. *IMPRISONMENT QUESTIONNAIRE

We would appreciate your prompt return of the questionnaire in the enclosed reply envelope. If a question calls for an answer for which you do not have exact data please give an estimate or approximation and *indicate the latter in your answer*. If any printed materials on this subject are available from your office please enclose copies.

1. Name and address of your office

Person in charge

Person reporting Date

2. Does your state law allow persons adjudged guilty of committing a misdemeanor to be imprisoned for nonpayment of fines imposed by the court? Yes No
Citation and/or title

3. How many indigent misdemeanants were represented by your public defender program from 1/1/69 to 1/1/70?
(a) Not ascertainable (b) Per week
(c) Per month (d) 1969 Total

4. How many of the total number given in answer 3(d) received:

- (a) only a jail sentence as punishment for the offense?
Total no. Per cent %
- (b) only a fine as punishment for the offense?
Total no. Per cent %
- (c) both a jail sentence and a fine?
Total no. Per cent %

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5. How many of the indigent misdemeanants who received fines were then imprisoned:

(a) because of their *inability* to pay the fine?

Total no. Per cent %

(b) because of their *refusal* to pay the fine?

Total no. Per cent %

6. Does either statute or judicial precedent forbid imprisonment for nonpayment of a fine from exceeding the maximum jail sentence for misdemeanors?

Yes No Not ascertainable

7. Are indigent misdemeanants also imprisoned because of their inability to pay court costs and fees?

Yes No Not ascertainable

8. Do you feel imprisonment of an indigent misdemeanant for nonpayment of a fine can be justified?

Yes No Not ascertainable

Why?
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.....
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.....

APPENDIX C

SELECTED RESULTS OF MISDEMEANOR FINE
VS.

IMPRISONMENT QUESTIONNAIRE

Name and Location of Office	Number of Misdemeanants Represented (1969)	Number of clients receiving a fine or a fine and jail sentence	Number of clients who received fines imprisoned for fail- ure to pay the fine
1. Office of the Public Defender, DuPage County, Illinois	442		25% (est.)
2. Office of the Public Defender, LaSalle County, Illinois	400	320 (80%)	40 (16%)
3. Scioto County Legal Aid Assn., New Boston, Ohio	100 (approx.)	(100%)	(100%)
4. Yellowstone County Legal Services, Billings, Montana	75	60 (80%)	10 (16%)
5. Dinebeina Nahiilna Be Agaditah, Ship- rock, New Mexico	150 (approx.)	147 (98%)	90 (60%)
6. Western Idaho Legal Aid, Caldwell, Idaho	24 (approx.)	24 (100%)	6 (25%)
7. Allen County Legal Services Assn., Lima, Ohio (only represents misdemeanants in special circumstances)	6	4 (67%)	2 (50%)
8. Crow Creek and Lower Brule Legal Services, Ft. Thompson, South Dakota	175 (Aug.-Dec. 1969)	(100%)	(50%)
9. Legal Services Program, Greenup, Kentucky	30 (approx.)	(40%)	(50%)
10. Leech Lake Reserva- tion Legal Services Project, Cass Lake Minnesota	250 (approx.)	(14%)	(10%)
11. Legal Aid Society of Calhoun County, Battle Creek, Michigan	24	24 (100%)	18 (75%)
12. Peterson and Lonergan, Ukiah, California	200 (approx.)	(75%)	(35%)
13. Tri-County Legal Services, Littleton, New Hampshire	33 (last four months of 1969)	13 (39%)	2 (15%)